

FEDERAL COMMUNICATIONS COMMISSION  
FEE PROCESSING FORM

FOR  
FCC  
USE  
ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

**SECTION I**

APPLICANT NAME (Last, first, middle initial)

American Cablesystems of Florida, Ltd., et al.

CC 95-95

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to Instruction (2) on reverse of form)

c/o Gardner F. Gillespie, Hogan & Hartson

MAILING ADDRESS (Line 2) (If required) (Maximum 35 characters)

555 13th Street N.W.

CITY

Washington,

DOCKET FILE COPY ORIGINAL

STATE OR COUNTRY (If foreign address)

D.C.

ZIP CODE

20004

CALL SIGN OR OTHER FCC IDENTIFIER (If applicable)

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)	(B)	(C)								
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY							
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C	I	Z								

**SECTION II**

— To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)	(B)	(C)								
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY							
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\$ 120.00										
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CHECK NO. 91150

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CHECK NO. 91150  
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 VENDOR NO. F 7025

**HOGAN & HARTSON**

ATTORNEYS AT LAW  
 555 13TH STREET, N.W.  
 WASHINGTON, D.C. 20004

CHECK NO. 091150

AMERICAN SECURITY BANK  
 WASHINGTON, D.C.

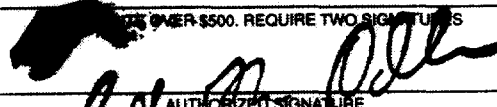
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CHECK AMOUNT

\$\*\*\*\*\*120.00

ONE HUNDRED, TWENTY AND 00/100

PAY  
 TO THE  
 ORDER OF FEDERAL COMMUNICATIONS COMMISSION

OVER \$500. REQUIRE TWO SIGNATURES  
  
 AUTHORIZED SIGNATURE

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C.

**RECEIVED**  
Jun 21 '95  
FEDERAL COMM. COMMISSION  
OFFICE OF THE  
SECRETARY

In the Matter of )  
 )  
AMERICAN CABLESYSTEMS OF )  
FLORIDA, LTD., a )  
Massachusetts Limited Partnership )  
d/b/a/ Continental Cablevision )  
of Broward County and )  
CONTINENTAL CABLEVISION OF )  
OF JACKSONVILLE, INC., a )  
Florida Corporation )  
 )  
Complainants, )  
 )  
v )  
 )  
FLORIDA POWER & LIGHT COMPANY )  
 )  
Respondent. )

CC 95-99

DOCKET FILE COPY ORIGINAL

File No. PA 92-0012

TO: The Common Carrier Bureau

COMPLAINT

Parties

1. American Cablesystems of Florida, Ltd., a Massachusetts Limited Partnership d/b/a Continental Cablevision of Broward County, owns and operates cable television systems serving and Broward County, Florida. American Cablesystems' address is 141 N.W. 16th Street, Pompano Beach, Florida 33060-5291. Continental Cablevision of Jacksonville, Inc., a Florida Corporation, owns and operates a cable television system serving Jacksonville, Florida. Continental Cablevision's address is 5934 Richard Street, Jacksonville, Florida 32216. American Cablesystems and Continental

Cablevision of Jacksonville will hereafter be referred to jointly as "Complainants."

2. Florida Power & Light Company ("Respondent" or "FPL") is engaged in the provision of electric service in the State of Florida. Respondent's office address is P.O. Box 029100, Miami, Florida 33102.

### Jurisdiction

3. The Commission has jurisdiction over this Complaint and over Respondent under the provisions of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 et seq., including but not limited to, Section 224 thereof.

4. Respondent owns or controls utility poles in Florida. Such poles are used for purposes of wire communications. Complainants allege, upon information and belief, that Respondent is not owned by any railroad, any person who is cooperatively organized, or any person owned by the federal government or any state.

5. Complainants allege, upon information and belief, and in reliance upon the lists published by the Commission pursuant to 47 C.F.R. § 1.1414(b), that neither the State of Florida nor any of its political subdivisions, agencies, or instrumentalities has certified to the Commission that it regulates the rates, terms, or conditions of pole attachments.

### Service

6. Attached hereto is a Certificate of Service on Respondent and each federal, state, and local agency that regulates any aspect of service provided by Respondent.

### Agreement

7. Complainants have entered into agreements with Respondent, whereby it was agreed that space would be made available on Respondent's poles for pole attachments as defined in 47 C.F.R. § 1.1402(b). The agreements are attached hereto as Exhibits A & B. Under the agreements, Respondent currently charges Complainants annual rental of \$6.04 per attachment. Exhibit C. There are currently 22,361 poles subject to the agreements.

8. Efforts by Complainants to negotiate a reasonable rate with Respondent have been, and will be, fruitless. Counsel for Complainants has discussed the matter with counsel for Respondent and the latter has indicated that Respondent will not voluntarily reduce its pole rate.

### Unjust and Unreasonable Rate

9. Respondent is thus currently charging Complainant an annual rental of \$6.04 per attachment per pole. As will be demonstrated below, under the formula made applicable by Section 224(d)(1) of the Communications Act and 47 C.F.R. § 1.1409(c), the maximum lawful rate Respondent may charge is \$5.69.

10. The financial data necessary to calculate the maximum lawful rate under the formula is available in Respondent's most recent Annual Report Form 1. Exhibit D.

11. By statute, the maximum lawful rate is determined by multiplying the "revenue requirement" of each pole (the operating expenses and capital costs attributable to each bare pole installed) by the "use ratio" for cable television (the percentage of total usable space occupied by the pole attachment).

12. The first step in determining the maximum lawful rate is the calculation of the revenue requirement per pole. Respondent claims a gross investment in pole plant of \$362,124,000 and a depreciation reserve of \$137,011,000. Exhibits D & E. Subtracting the depreciation reserve from the gross investment yields a net investment in pole plant of \$225,113,000. Exhibit E. That figure must, however, be adjusted to remove net investment in cross-arms and other items not used or useful for pole attachments. The Commission presumes that fifteen percent of an electric company's net investment in pole plant is attributable to these non-pole related appurtenances. Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCC Rcd. 4387, 4390 (1987), recon. denied, 4 FCC Rcd. 468 (1989) ("1987 Report and Order"). Fifteen percent of Respondent's net investment in pole plant equals \$33,766,950. Deducting this amount from the \$225,113,000 net

investment in poles yields a net investment in bare poles installed of \$191,346,050. Dividing this figure by the total number of poles owned, 879,416, yields Respondent's investment per bare pole installed of \$217.58. Exhibit E.

13. Investment per pole must be multiplied by an annual carrying charge, expressed as a percentage, to determine the annual revenue requirement per pole. The carrying charge for Respondent's poles consists of maintenance expense, depreciation, administrative expense, taxes, and cost of capital.

14. The depreciation rate, 3.0 percent, appears in Respondent's Annual Form 1, and is expressed as a percentage of gross pole investment. Exhibit D. This depreciation rate can be converted to a percentage of net pole investment by multiplying it by a conversion rate equal to the quotient of gross pole investment divided by net pole investment. Respondent's depreciation rate, as a percentage of net investment, is 4.83 percent. Exhibit E.

15. Administrative expenses associated with pole attachments can be expressed as the ratio of Respondent's total administrative expenses to net plant in service. 1987 Report and Order, supra, at 4392. Respondent's total administrative expenses were \$332,169,033. Exhibits D & E. Respondent's net utility plant in service, \$8,585,152,364, can be derived by subtracting Respondent's plant depreciation reserve from the gross utility plant in service. Exhibit E. The administrative

expense element of Respondent's carrying costs equals 3.87 percent, the quotient of dividing \$332,169,033 by \$8,583,152,364.

16. Tax expenses associated with pole attachments are not separately provided for in the Annual Report Form 1. Complainant assumes, therefore, that taxes associated with poles are in the same proportion to pole investment as taxes are to net plant in service. Respondent's total taxes, \$669,829,213, divided by net plant investment, yields 7.80 percent. Exhibit E.

17. The Annual Report Form 1 does not include a line item for cost of capital. The approximate intrastate overall rate of return (including return of equity and interests on debt) is 10.4 percent. Exhibit C.

18. According to prior FCC decisions, the maintenance component is calculated by dividing the expenses reflected in Account 593 by the investment in Accounts 364 (poles), 365 (overhead lines), and 369 (services) (less accumulated depreciation). 1/ See 1987 Report & Order, at 4402. FP&L has not used this methodology. Instead it has included only a portion of the full Account 369 in the denominator of the

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1/ Accumulated deferred income taxes are also subtracted from the denominator, except in states, like Florida, where accumulated deferred taxes are included in the utility's capital structure at zero cost.



maintenance component. It is this error that creates a pole attachment rate that exceeds the maximum annual just and reasonable rate by \$0.35 per pole.

19. In the early 1980s FPL sought to increase its maintenance component by adding supplemental expenses. The FCC ordered FPL to divide the maintenance expenses in Account 593 by the net investment in Accounts 364, 365, and 369. Warner Amex Cable Communications, Inc. v. Florida Power & Light Co., PA-82-0016, at ¶ 12 (June 8, 1982). Exhibit F. The proper calculation of the maintenance component has not changed.

20. The Uniform System of Accounts prescribed by FERC for electric utilities describes Account 593 to "include the cost of labor, materials used, and expenses incurred in the maintenance of overhead distribution line facilities, the book cost of which is includable in account 364, Poles, Towers and Fixtures, account 365, Overhead Conductors and Devices, and account 369, Services." 18 C.F.R. Part 1 ¶ 593. The FERC Uniform System of Accounts describes Account 369 to "include the cost installed of overhead and underground conductors leading from a point where wires leave the last pole of the overhead system or the distribution box or manhole, or the top of the pole of the distribution line, to the point of connection with the customer's outlet or wiring. Conduit used for underground service conductors shall be included herein." Id. ¶ 369. There is no description of any subaccounts to Account 369.

21. Many utilities keep subaccounts of the FERC accounts, as they are permitted to do under FERC regulations. But Congress insisted that the FCC's pole attachment methodology be "simple and expeditious," Senate Rep. No. 95-580, 98th Cong. 1st Sess. 21 (1977), and the Commission determined years ago that "resolution of pole attachment disputes should, so far as possible, rely on data developed for regulatory purposes," Television Cable Service, Inc. v. Monongahela Power Co. 48 R.R.2d 1259, 1267 (Com. Car. Bur.), aff'd, 50 R.R.2d 583 (1981). See also 47 C.F.R. § 1.1404(g) ("Data should be derived from Form M, FERC 1, or other reports filed with state or Federal regulatory agencies . . ."); In re. Adoption of Rules for the Regulation of Cable Television Pole Attachments, 72 F.C.C 2d 59, 64 (1979). The Commission has thus relied on accounts defined by FERC for the Form 1. See, e.g., 1987 Report & Order, at 4402 & note \*. The Commission's desire for a uniform and expeditious methodology is not served by the use of utility subaccounts, and their use is not contemplated by the rules. See, e.g., Warner Amex Cable Communications, Inc. v. Arkansas Power & Light Co., PA-82-0019 (Oct. 11, 1983), Exhibit G.

In the Arkansas Power & Light case, the Commission explicitly addressed -- and rejected -- the effort of a utility to rely on a subaccount of Account 369 in the maintenance component. The Commission agreed that use of subaccount 369.1 "which includes expenses only for overhead services would be

more accurate here than one which includes expenses for both overhead and underground services." Id. at 4. Nevertheless, the Commission noted that overhead expenses "are not reported in a separate account in FERC Form 1, and to provide the kind of detail necessary to support allocation of the accounts used to compute the components of the carrying charges would unduly complicate and unnecessarily delay the process of determining the maximum lawful rate." Id.

22. FPL's ploy here has simply been to list its investment in subaccount 369.1 on the page of its Form 1 that records depreciation charges. 2/ But including subaccount information in the Form 1 cannot be accepted as a legitimate method of increasing a pole attachment rate, when that subaccount is not defined by FERC, required to be kept, or contemplated by the FCC's methodology. Should FPL's strategy here be accepted, there undoubtedly will be a movement by FPL and other utilities to gratuitously list other subaccounts somewhere in their Form 1's in a further effort to refine the pole attachment methodology -- and increase pole attachment fees. Of course, the utilities will not make such refinements

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2/ FPL lists the amount on page 337-A of its Form 1 (Factors Used in Estimating Depreciation Charges), not on page 203, which the commission has stated is the source for the figures to be used in the denominator of the maintenance component. See 2 FCC Rcd. at 4404. Other utilities in Florida and elsewhere do not list subaccounts in stating their depreciation factors.

where the result would be to reduce pole rates. The utilities' one-sided action would -- as it has here -- upset the careful "balance" created by the Commission's methodology.

The Commission understood when it established its pole methodology that it was "balancing" its formula by including some accounts that contain non-cable related expenses, while it was omitting other accounts that contain some cable-related expenses. See Liberty TV Cable Co. v. Southwestern Bell Telephone Co., PA-80-0012, Mimeo 6625 (Sept. 22, 1983). As the Commission noted in the Arkansas Power & Light case, the Commission's methodology is intended to be a simple, balanced, rough-justice approach:

The Commission's methodology . . . relies on balancing. Thus, while small portions of some accounts which admittedly relate to cable attachments (such as loading factors) are omitted, other entire accounts which contain non-cable-related expenses are included.

Arkansas Power & Light, at 4 n.3.

23. The reasonableness of the Commission's approach is proved by the facts of this case. It is not clear when FPL first included its gratuitous reference to Account 369.1 in its Form 1. It is clear, however, that until 1988 FPL calculated the maintenance component of its pole attachment rate, correctly, by using the entire account 369 in the denominator. See Exhibit H. In 1988, without explanation, FPL began relying on account 369.1 in the maintenance component. Not only was no such revision suggested in the Commission's 1987 Report &

Order, but the Commission there listed the entire account 369 as appropriate for inclusion in the denominator of the maintenance component. 2 FCC Rcd. at 4402.

24. At about the same time, FPL changed its internal accounting practices to eliminate its prior separate accounting of appurtenances in Account 364. Account 364 contains numerous appurtenances in addition to poles. At least through 1986, FPL's separate records of Account 364 confirmed that 37 percent of that account consisted of appurtenances other than poles. See Exhibit H. After the Commission ruled in 1987 that anchors and guys would be treated as pole-related and that it would presume that only 15 percent of Account 364 was not pole-related, FPL apparently changed its accounting practices. According to its counsel, FPL no longer maintains separate records of appurtenances and instead, "FPL's investment in cross-arms, guy wires, and so forth is rolled into the property unit supporting these facilities." See Exhibit I. Although FPL's investment in non-pole-related appurtenances in Account 364 undoubtedly continues to exceed the FCC's 15-percent presumption, FPL has apparently rid itself of the records that would prove it.

25. FPL cannot alter the FCC's methodology by selectively recording subaccounts and listing them on its Form 1 where to do so reduces the pole attachment rate, and to cease keeping records that would show the FCC's presumptions to overstate the proper rate. The Commission has recognized that

its methodology could be fine-tuned to be more accurate in any number of respects. But its balanced approach is intended to be simple and to roughly approximate the result of breaking down all key elements to finer levels. See, e.g., Arkansas Power & Light, at 4 n.3. Utilities may not be permitted to selectively pick and choose the elements of the methodology they break down into greater detail.

26. Applying the correct and approved FCC methodology, the expense in Account 593, \$66,188,732, is divided by the sum of the net investment in Accounts 364, 365, and 369, \$789,955,000, for a maintenance factor of 8.38 percent. Exhibit E.

27. The sum of all carrying charge components for Respondent is 35.28 percent. Exhibit E. Complainants will use the figure for purposes of the calculation herein. Multiplying the net investment per pole, \$217.58, by the annual carrying charge yields an annual revenue requirement of \$76.76 per pole.

28. In order to determine what share of the revenue requirement Respondent may charge to cable systems, it is necessary to determine two factors: the space used for a cable attachment, and the average usable space per pole.

29. As the Commission has found, there is no dispute that a CATV cable actually uses or occupies one foot of space. See e.g., Pole Attachments - CATV Regulations, 72 F.C.C.2d 59, 70 (1979), recon, denied, 77 F.C.C.2d 187 (1980). No safety

zones or other clearances may properly be assigned to the cable operator. 72 F.C.C.2d at 71.

30. Complainants may make the reasonable assumption that Respondent's average usable space is in accordance with the Commission's estimate, which presumes 13.5 feet of usable space per pole. 47 C.F.R. § 1.1404(g)(11).

31. Dividing the space occupied by the cable attachment, 12 inches, by the total usable space, 162 inches, yields a use ratio of 7.41 percent. Complainants use 7.41 percent of the usable space on each of Respondent's poles.

32. Therefore, multiplying the revenue requirement per pole, \$76.76 by the use ratio, 7.41 percent, yields the maximum lawful rate which may be charged by Respondent: \$5.69. Pursuant to 47 U.S.C. § 224(d)(1), that rate is the maximum just and reasonable rate. Any rate charged by Respondent in excess thereof is unjust and unreasonable, and therefore unlawful.

#### Relief Requested

33. Complainants respectfully request that

(1) the Commission determine that the maximum rate Respondent may lawfully charge is \$5.69 per pole per year;

(2) the present rates, being in excess thereof, be terminated pursuant to 47 C.F.R. § 1.1410(a);

(3) the Commission, pursuant to 47 C.F.R.  
§ 1410(b), substitute the annual rate of \$5.69 per pole in the  
agreements attached hereto as Exhibits A & B; and

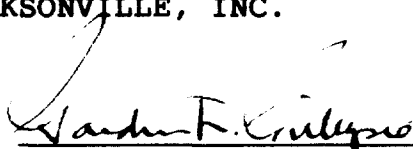
(4) Respondent be ordered, pursuant to 47 C.F.R.  
§ 1.1410(c), to refund to Complainants the amount Complainants  
have paid to Respondent in excess of the maximum lawful rate  
for the period from the date hereof, plus interest.

Respectfully submitted,

AMERICAN CABLE SYSTEMS OF  
FLORIDA, LTD.

CONTINENTAL CABLEVISION OF  
JACKSONVILLE, INC.

By

  
Gardner F. Gillespie

HOGAN & HARTSON  
555 13th Street, N.W.  
Washington, D.C. 20004  
(202) 637-8796

Their Attorneys

9395G/4310o



EXHIBIT A

## CATV ATTACHMENT AGREEMENT

THIS AGREEMENT, made this 22<sup>nd</sup> day of February, 1991, between FLORIDA POWER & LIGHT COMPANY, a corporation organized and doing business under the laws of the State of Florida, hereinafter called "FPL" and American Cablesystems of Florida, LTD., d/b/a Continental Cablevision of Broward County, a (corporation/general or limited partnership/individual/joint venture) organized and doing business under the laws of the State of Massachusetts, hereinafter called "Licensee."

## WITNESSETH

WHEREAS Licensee proposes to furnish television distribution service ("Cable Service") in the following areas where authorization has been granted by the political jurisdiction having authority for the areas: (List the political jurisdictions covered under this Agreement and with the signed original of this Agreement provide a copy of all existing franchises or other authorizations to furnish CATV service within FPL's service area. Where the franchisee has changed from the time of issuance of the franchise, provide a statement from an officer of Licensee showing how the franchise or other authorization gives authority for Licensee to operate in the jurisdiction. The copy for all new franchises and amendments must contain an original certification that it is a true and correct copy.)

Deerfield Beach, Pompano Beach, Wilton Manors, Broward County (including  
Oakland Park), Tamarac, Sunrise, Plantation, Hillsboro Beach, Lighthouse  
Point, Lauderdale, Lazy Lake.

and will need to erect and maintain aerial cables, wires and associated support hardware throughout the area to be served and desires to attach such cables, wires and associated support hardware to Poles of FPL; and

**WHEREAS** FPL is willing to permit, to the extent it may lawfully do so, the attachment of said cables, wires and associated support hardware to its existing Poles where, in its judgment, such use will not interfere with its own or other joint Pole users' service requirements, including considerations of economy and safety;

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions herein contained, the parties covenant and agree as follows:

1. Definitions

- 1.1 Attachment: The physical attachments of the Licensee's Cable Service system or Non-Cable Service system to an FPL Pole consisting of the cables, wires, and supporting hardware required to attach the system to the FPL Pole. All other equipment and hardware required to operate the Licensee's system are excluded from this definition and will not be allowed on FPL Poles, except that existing power supplies and associated equipment may remain on FPL Poles until such FPL Poles are replaced or relocated.
- 1.2 Cable Service: Television distribution service as defined as Cable Service in 47 U.S.C. §522(5) of the Cable Act and, for purposes of this Agreement only, non-profit public service which the Licensee lawfully is required to provide to the government entity issuing Licensee's franchise as a condition of such franchise.
- 1.3 FPL Pole or Pole: A Pole owned by FPL used for the distribution of electricity.
- 1.4 Make-Ready Work: Work that must be performed on an FPL Pole so that the Pole will accept a cable attachment in compliance with the National Electric Safety Code and any additional requirement by FPL.
- 1.5 Non-Cable Service: All transmissions of Licensee which are not included in the definition of Cable Service.
- 1.6 Service Area: That area wherein Licensee proposes to furnish Cable Service, specifically described in the first "Whereas" clause above.

## 2. Grant of License

- 2.1 FPL shall grant to Licensee, to the extent that it may lawfully do so, and if Licensee complies with the terms and conditions of this Agreement, the right to attach to FPL Poles, aerial cables, wires and associated support hardware throughout the Service Area, as is necessary, and for the purpose of allowing Licensee to furnish Cable Service, and/or Non-Cable Service as provided in this Agreement, in the Service Area by transmitting signals on cables attached to FPL Poles.
- 2.2 As of January 1, 1990, all existing and future Attachments by Licensee to an FPL pole shall be deemed to include Non-Cable Service as that term is defined in section 1.5 of this Agreement and Licensee shall be charged the higher Non-Cable rate for each existing and subsequent Pole Attachment. Provided, however, if Licensee submits to FPL a sworn statement of an officer of Licensee that Licensee is providing only Cable Service, Licensee shall be charged only the Cable Service Attachment rate. If Licensee submits to FPL a sworn statement by an officer of Licensee that Licensee is providing both Cable and Non-Cable Service and identifies by area and number those Poles containing Attachments for Non-Cable Service, Licensee shall be charged the higher Non-Cable rate only for those Poles so identified. For Attachments made after the date of this Agreement, Licensee shall indicate on the Permit Application by using Exhibit A or Exhibit A-1 whether the Attachment will include Non-Cable Service and the number of poles with Non-Cable Attachments. Licensee has the burden of proof as to whether its Attachments include Non-Cable Service.
- 2.3 If it is determined through final order of the FCC in a proceeding in which FPL is a party or of a federal appellate court binding on Florida or FPL or by the United States Supreme Court that pole attachment rates by a CATV company for Non-Cable Service are subject to the rate limitations of 47 U.S.C. §224, then the attachment rate charged for Non-Cable Service shall be adjusted to match the rate for Cable Service as of the effective date of such order. If, and only if, the final order has

retro-active application and attachment for Non-Cable Service were found to be authorized or legally required under FPL's pole attachment agreement, FPL shall refund or credit to the account of Licensee, at the option of Licensee, such sums as required by such final order.

2.4 If it is determined through such final order that the limitations of 47 U.S.C. §224 apply to Cable Service only as defined in the Cable Act or other specified types of services not within the definition of Cable Service as defined in the Cable Act, or as expressly permitted under this Agreement, and the order has retro-active application, the Licensee shall pay FPL for such unauthorized attachments from the date of such Attachment.

2.5 Licensee's Attachments shall not interfere with FPL's own service requirements, including considerations of economy and safety. All power supply cables and conduits emanating from the Pole to the Licensee's power supply will be owned, installed and maintained by FPL. The interfacing point between FPL's and Licensee's power supply cable will be at the sole discretion of FPL.

### 3. Application for Attachment

Before making Attachment to any FPL Pole, Licensee shall apply for and receive a permit, in the form of Exhibit A, attached hereto and made a part hereof, except that Licensee may attach service drops to FPL service Poles without advance application, provided that Licensee submits an application within 30 days after such Attachment and includes such Attachment in Licensee's monthly report of Attachments. Licensee shall attempt to keep FPL informed verbally, or by other accepted means, of areas in which service Pole Attachments are expected to be made. Also, once a month Licensee shall notify FPL of all Attachments made during the prior month, in the form of Exhibit B, hereto attached and made a part hereof.

### 4. Preparation of Poles for Attachment

Prior to applying for a permit, the Licensee shall inspect the FPL Poles to be attached to and, in the event that any FPL Pole is inadequate to support the additional

facilities in accordance with the aforesaid specifications, Licensee will indicate on the form attached as Exhibit A, that changes are necessary to provide adequate clearance (i.e., Make-Ready Work). An estimate of the cost of the Make-Ready Work will be sent to Licensee, and, if Licensee still desires to make the Attachments and returns the Exhibit marked to so indicate together with an advance payment to reimburse FPL for the entire estimated nonbetterment portion of the cost and expense of the Make-Ready Work, including the entire cost of the replacement Pole, sacrificed life value of Poles removed, cost of removal less any salvage recovery and the expense of transferring FPL's facilities from the old to the new Poles, FPL may replace such inadequate FPL Poles with suitable FPL Poles. When Licensee's desired Attachments can be accommodated on present FPL Poles by rearranging FPL's facilities, Licensee will compensate FPL in advance for the full estimated expense incurred in completing such rearrangements. Licensee shall also in advance reimburse the owner or owners of other facilities attached to said FPL Poles for any expense incurred by it or them in transferring or rearranging said facilities. Any strengthening of FPL Poles (e.g., guying) required to accommodate the Attachments of Licensee shall be provided by and at the expense of Licensee and to the satisfaction of FPL. Licensee shall not be responsible for the costs of correcting pre-existing National Electric Safety Code (NESC) violations caused by other users, including FPL. The make-ready requirements for Licensee shall be determined after considering all corrections of pre-existing violations. Licensee shall not set intermediate Poles under or in close proximity to FPL's facilities. Licensee may, however, request FPL to set such intermediate FPL Poles as Licensee may desire, and FPL shall have the option to accept or reject such request consistent with good engineering practice. If such request is granted, Licensee shall reimburse FPL for the full cost of setting each FPL Pole. Drop or lift poles or Licensee-owned power supply poles, set by Licensee prior to the date of this Agreement, are not affected by this provision, provided that such Poles do not conflict with NESC, local ordinance or FPL service requirements. Licensee may set power supply service poles no higher than is required to meet NESC above grade requirements for electric service to Licensee's power supplies.

5. FPL's Right to Maintain and Operate its Poles and Facilities

FPL reserves to itself, its successors and assigns, the right to maintain the FPL Poles and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements, and in accordance with the National Electrical Safety Code, latest edition, or any applicable amendments, revisions, or subsequent editions to said Code and such specifications particularly applying to FPL. FPL shall not be liable to Licensee for any interruption to service of Licensee or for interference with the operation of the cables, wires and associated support hardware of Licensee arising in any manner out of the use of the FPL Poles by either Licensee or FPL.

6. Licensee's Authorization

- 6.1 Licensee shall submit to FPL evidence, satisfactory to FPL, of its authorization to erect and maintain its facilities within public streets, highways and other thoroughfares and shall secure any necessary permit, consent or certification from state, county or municipal authorities or from the owners of property to construct and maintain facilities for Cable Service at the locations of FPL Poles within the Service Area.
- 6.2 Licensee also shall obtain from local, state and federal governments and agencies all required permits and authorizations, including any required certification from the Florida Public Service Commission, prior to attaching to FPL Poles to provide Non-Cable Service.
- 6.3 Licensee shall release, indemnify, protect, defend and save harmless FPL, its parent, subsidiaries, affiliates and their respective officers, directors, agents and employees (FPL Entities) for Licensee's failure to obtain any such certification, permit or consent or any violation thereof whether or not caused in whole or part by FPL's negligence, including but not limited to costs, attorney's fees, relocation and other expenses. This indemnity is in addition to the indemnity in Section 12 herein.

7. Removal of Unauthorized Attachments

Upon notice that the use of an FPL Pole is forbidden or unauthorized by state, county, or municipal authorities or upon any final administrative or judicial decision that Licensee has no right to attach to any FPL Pole without consent of the property owner, the permit covering the use of such FPL Pole shall immediately terminate and Licensee, after notice from FPL and with prompt dispatch and using its best efforts, shall remove all of its cables, wires, and associated support hardware from the affected FPL Pole. The termination rights under Section 18 and 19 of this Agreement shall not be affected by this Section 7.

8. Installation and Maintenance

8.1 Licensee's Attachments

The Licensee, at its own expense, shall install and maintain its Attachments in safe condition and in thorough repair, both in a manner suitable to FPL and so that they will not conflict with the use of the Poles by FPL or by others or interfere with the working use of Facilities thereon or which may from time-to-time be placed thereon. The Licensee shall exercise special precautions to avoid damage to FPL Facilities and to attachments of others supported on FPL Poles and shall immediately report any damage to FPL and to any other owner of damaged Facilities or attachments.

8.2 Compliance with Safety Codes and Standards

8.2.1 The Licensee agrees to install, construct and maintain its Attachments in accordance with the requirements and specifications of the National Electric Safety Code, latest edition, or any applicable amendments, revisions, or subsequent editions of said Code as well as any additional requirements of FPL. This duty includes making adjustments to ensure compliance after facility modification by FPL, another joint user or Licensee.



- 8.2.2 Licensee agrees to warn its employees, agents, contractors, and invitees of the fact that the electrical facilities and appurtenances installed or to be installed by FPL are of high voltage electricity and to inform such persons as to safety and precautionary measures which he or she must use when working on or near FPL Poles and other facilities.
- 8.2.3 It is further understood and agreed by the Licensee that the installation, construction and maintenance of Attachments within ten (10) feet of FPL's primary conductors (defined herein as all conductors with voltage potentials exceeding 750V) shall be subject to the approval of FPL within its sole and absolute discretion, for considerations of safety. Further, all installation work will be done in accordance with local rules, regulations, statutes and ordinances.
- 8.2.4 Licensee's equipment on each Pole shall not occupy more than one foot (1') of Pole space, except for existing power supplies. Licensee's one foot shall extend six inches (6") above and below Licensee's main cable Attachment Point. The main Attachment Point shall be located as specified in the schematic drawing included in Exhibit "A." Attachments predating this Agreement, and subsequent Attachments if approved by FPL, may continue to use more than twelve inches as a single attachment until such space is required by other pole users.
- 8.2.5 Multiple cable installations to a single strand, and lashing of additional cable(s) to an Attachment may be made if consistent with a wind-loading study, pursuant to Exhibit C, submitted by Licensee to FPL with a Permit Application or no less than 30 days prior to construction if such construction is made after the initial Attachment.